

JUN 3 1996

CLERK

No. 95-1785

In The
Supreme Court of the United States

October Term, 1995

WILLIAM W. NESSON,

Petitioner,

vs.

MAUREEN P. MCINTYRE,

Respondent.

*On Petition for a Writ of Certiorari to the
State of Illinois Supreme Court*

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should the Court grant certiorari to review the Illinois Supreme Court's denial of leave to appeal when that order is not in conflict with decisions of the United States Courts of Appeal or this Court, and when no federal question is implicated?

STATEMENT OF JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257. None of the jurisdictional criteria set forth in that statute is applicable. Petitioner did not raise the constitutionality of Illinois's garnishment statute in the state courts and does not now before this Court claim that the garnishment statute is "... repugnant to the Constitution, treaties, or laws of the limited States . . ." The first [q]uestion presented is whether the granting of summary judgment by the trial court violated the Due Process Clause of the Fourteenth Amendment, yet Petitioner does not argue this procedural point. Because the Petition fails to set forth any grounds upon which this Court may exercise jurisdiction, the Petition should be denied.

STATEMENT OF THE CASE

Maureen P. McIntyre, as attorney for Petitioners wife in a dissolution proceeding, obtained a judgment against Petitioner for attorneys fees and caused a non-wage garnishment summons to issue to Olde Discount Corporation. McIntyre never sought a judgment or turnover order for the Olde Discount accounts and the non-wage garnishment was released by agreement.

The Illinois Appellate Court for the Second District found that "Both parties agree that the Olde Discount accounts qualify as exempt property pursuant to Section 12-1006 of the Code (735 ILCS 5/12-1006 (West 1992))." The court held that, pursuant to Illinois law, the service of the garnishment summons created a lien in favor of the judgment creditor and that the lien was not equivalent to a seizure of the property under Illinois' garnishment statute.

REASONS FOR DENYING THE WRIT

It is submitted that the asserted conflict between the decision of the Illinois Supreme Court to deny leave to appeal and this Court's decision in *United States v. Jacobsen*, 446 U.S. 109, 80 L. Ed. 2d 85, 104 S. Ct. 1652 (1984) does not exist. *Jacobsen* arose in the context of a warrantless search for narcotics.

It is also submitted that no important federal question is implicated in the instant petition. An Illinois court construed a state garnishment statute. McIntyre, as a private individual, caused the garnishment summons to issue and to be served. There is no state action which would trigger Fourth Amendment search and seizure concerns. Petitioner ignores this Court's holding in *Jacobsen* that, "This Court has . . . consistently construed the protection [against unreasonable seizures] as proscribing only governmental action; it is wholly inapplicable to a search or seizure, even an unreasonable one, affected by a private individual . . ." (80 L. Ed. 2d 85, 94). In *Jacobsen*, Federal Express employees opened a package, were suspicious of its contents, and alerted federal investigators, who then conducted field tests which revealed the presence of cocaine. It was in this context that this Court defined a "seizure" as "some meaningful interference with an individual's possessory interest in that property." (80 L. Ed. 2d 85, 94). This definition was fashioned from the Court's earlier definitions of "seizure" as it pertained to arrest.

Clearly, a state garnishment statute falls outside the scope and intent of *Jacobsen*. It is submitted that the Illinois Appellate Court's reasoning, that the garnishment summons created a lien but did not amount to a seizure, cannot be faulted. At all times Olde Discount held the property and under Illinois law was prohibited from turning the property over to McIntyre in the

absence of a garnishment judgment. *In Re Marriage of Souleles* 111 Ill. App. 3d 865, 872-73 (1982). Even if this Court were to apply *Jacobsen*'s definition of "seizure" to the case at bar, the mere creation of the lien is not a "meaningful interference with an individual's possessory interest . . ." (Emphasis added). No property was transferred out of the Olde Discount accounts into McIntyre's possession, nor did she seek such a transfer of possession.

In *Soldal v. Cook County*, 506 U.S. ___, 121 L. Ed. 2d 450, 113 S. Ct. 538 (1992), the Fourth Amendment was implicated because sheriff's deputies were present to prevent the owners of a mobile home from interfering with its unlawful removal from a trailer park. In that case this Court found state action. Petitioner can point to no such state action in the service of a non-wage garnishment summons by a private individual on a corporation. Moreover, the "seizure" in *Soldal* was a literal carrying away of the mobile home. As pointed out above, the Olde accounts were never transferred out of Petitioner's possession, but were frozen for a time at the instance of Olde. Furthermore, the Olde assets as well as others, were already frozen by prior Court Order in the divorce action, which was still pending.

It is submitted that in the absence of a conflict in decisions and important federal question, there are not other compelling reasons presented by Petitioner for the granting of the Writ to the Illinois Supreme Court. The opinion of the Illinois Appellate Court is unreported and is of no precedential value. Consequently, there are not "special and important reasons" for granting a Writ of Certiorari to review Petitioner's questions, questions which were not presented to the state courts for review and should be deemed waived. The Petition should be denied.

CONCLUSION

The Questions Presented for Review are based upon a false premise, namely, that the Fourth Amendment and the Fourteenth Amendment were violated in this case, or even implicated. There is no conflict between the state court of last resort and this Court. Couching the issues in terms of the Fourth and Fourteenth Amendments does not give this Court jurisdiction pursuant to 28 U.S.C. § 1257. Finally, there are no aspects of this case which are so special or important that they deserve review by the United States Supreme Court.

For all of the above reasons, the Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

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